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SERVICE DATE - OCTOBER 24, 2001

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1244

[STB Ex Parte No. 385 (Sub-No. 5)]

Modification of the Carload Waybill Sample Reporting Procedures

AGENCY: Surface Transportation Board

ACTION: Final Rule

SUMMARY: The Board modifies its regulations to require all railroads operating in the United States to include in the Carload Waybill Sample (Waybill Sample) export traffic moving from or through the United States. To comply with this regulation, railroads may report data on either the U.S. portion of movements or on entire international movements. Railroads reporting information on only the U.S. portion of movements may use a mileage proration to estimate the revenues attributable to the U.S. leg of the movement. When actual revenue divisions are reported, carriers may encrypt (mask) the revenue information if such information is commercially sensitive. This modification of the reporting requirements is designed to improve the accuracy of the Waybill Sample.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: James Nash, (202) 565-1542 or H. Jeff Warren, (202) 565-1533. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: We require railroads that annually terminate 4,500 or more carloads (or 5 percent of the carloads in any state) to report data, including revenues, on individual movements drawn from a random sampling of their traffic. 49 CFR 1244.2. This Waybill Sample is used for a variety of purposes by the Board, parties appearing before the Board, other Federal and state agencies, and the public in general. Because of the increased volume of rail traffic moving between the United States and Canada or Mexico, or between Canada and Mexico through the United States, we proposed (in a Notice of Proposed Rulemaking served September 8, 2000) to require railroads to include in the sampling process export traffic moving on the U.S. rail system.

Comments were filed by the United States Department of Transportation (DOT), the Western Coal Traffic League (WCTL), and the Association of American Railroads (AAR). DOT and WCTL support the proposal but ask for clarification.

DOT asks whether, when using data on the U.S. portion of international movements, we will modify our revenue and costing algorithms to account for the fact that the traffic does not actually terminate at the U.S. border. We recognize that, when waybill information is used to develop costs associated with specific rail service or assign revenues to segments of a movement, we must account for the fact that export traffic does not terminate at the border. Accordingly, when estimating segment costs and revenues for cross-border traffic, we will not assign the extra costs or revenues generally associated with actual terminations to points where international traffic simply crosses the border on the way to its final destination.

WCTL suggests that, to the extent possible, railroads should specify the foreign destination and revenues associated with the export traffic. As discussed below, railroads will be permitted to report such information but will not be required to do so. We do not have the authority to require foreign carriers that terminate export traffic to report information on traffic moving outside the United States. 49 U.S.C. 10501(a)(2). WCTL further asks whether export traffic will be sampled and tracked as a specific category, or whether it will be sampled on the same basis as, and subsumed within, other traffic generally. While our regulations will require the specific identification of export traffic in the Waybill Sample, we do not intend that such traffic be treated as a separate category of traffic but rather be sampled and tracked like other railroad traffic.

AAR, while acknowledging the need for an accurate Waybill Sample, expresses concern that the proposal may be burdensome for some railroads to implement because it could require expensive data processing changes in order to develop revenue data on only the U.S. portion of international movements. We note that the Canadian National Railroad Company and the Canadian Pacific Railroad Company, which are currently voluntarily reporting the information that the proposed regulations would require, have not complained of an undue burden. Nevertheless, should other carriers find it impractical to allocate revenues between the U.S. and foreign legs of movements, we will allow the reporting of information on entire international movements. With this modification, we believe that any expense associated with implementing the new regulations should be limited.

Because actual U.S. revenues are only available for traffic that is interchanged at or near the border, AAR notes that for much of the international traffic a mileage proration formula or other estimation process must be used to allocate revenues. AAR suggests that if such a revenue allocation procedure is adopted, it may be easier for carriers to rely on the mileage proration formula now used by ALK Associates (ALK).

We recognize that an allocation of revenues may be necessary. Indeed, we currently use a mileage formula to allocate revenues between U.S. carriers on multi-carrier domestic movements. Furthermore, as with other reporting requirements, carriers are free to use an outside contractor to develop their reports. We are familiar with the ALK revenue allocation procedure and do not object to its use for this purpose.

Finally, AAR expresses concern that the proposal may result in the disclosure of commercially sensitive revenue-division information. We share AAR's concern. Therefore, as with contract revenue information, we will allow carriers to encrypt (mask) actual revenue divisions on traffic interchanged at or near the U.S. border.<sup>1/</sup>

In sum, we are adopting regulations that will require carriers to include export traffic in the Waybill Sample. Railroads may report information on either the entire international movement or treat the U.S. portion of the movement as terminating at or near the border<sup>2/</sup> for purposes of developing the data required by the Waybill Sample.

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

#### **List of Subjects in 49 CFR Part 1244**

Freight, Railroads, Reporting, and record keeping requirements.

Decided: October 17, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary

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<sup>1/</sup> Carriers that mask cross-border waybill revenues must follow the procedures set forth in 49 CFR 1244.3(a) and (b) and use the same masking factors they use to mask contract revenues. Masked contract revenues should have the waybill flag set to one (1) and non-contract cross-border waybill revenues that are masked should have the flag set to two (2).

<sup>2/</sup> Near the border is defined as the first station or interchange point through which the shipment moves in either Canada or Mexico.

For the reasons set forth in the preamble, Title 49, Part 1244 of the Code of Federal Regulations will be amended as follows:

1. The authority citation for Title 49, Part 1244 continues to read as follows:

AUTHORITY: 49 U.S.C. 721, 10707, 11144, 11145.

2. Section 1244.3 is amended by revising the heading and adding paragraphs (c) through (f) to read as follows:

**§1244.3 Reporting contract shipment waybills and Canadian and Mexican international waybills.**

\* \* \* \*

(c) Railroads moving traffic on the U.S. rail system to the Canadian or Mexican border shall include a representative sample of such international export traffic in the Waybill Sample.

(d) Railroads shall identify (flag) such movements as international traffic in the waybill records.

(e) Railroads may report information on the complete rail routing or report only information related to the U.S. portion of the movement.

(f) Railroads may mask revenue divisions associated with cross-border traffic following the masking procedures set forth in paragraphs (a) and (b) of this section.